IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 735 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANE CO. LTD.

Versus

GULABBHAI PUNABHAI

Appearance:

MS MEGHA JANI for Appellant

MR PK PAREKH for Respondents Nos 1 and 2

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE J.R.VORA

Date of decision: 09/04/2001

ORAL JUDGEMENT (Per : MR.JUSTICE A.R.DAVE)

1. Learned Advocate Ms. Megha Jani seeks permission to delete respondents Nos. 3 and 4, who are respectively Driver and owner of the vehicle in question. Permission for deleting them from the present proceedings is granted.

2. Admit. Learned Advocate Shri P.K. Parekh waives service for respondents Nos. 1 and 2. At the request of the learned Advocates, the Appeal is finally heard today.

3. Respondents Nos. 1 and 2 are claimants in Motor Accident Claim Petition No. 533 of 1999, which has been filed in the Motor Accident Claim Tribunal, Bhavnagar. The claim petition has been filed as 10 years old boy, namely, Riddhesh Gohil expired in a motor accident on 19th March, 1999. In the said Motor Accident Claim Petition, an application was filed by the claimants under the provisions of Sec. 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"). After hearing the concerned advocates and upon perusal of the affidavits, on 19th October, 2000, the Tribunal has passed an Award below Exh.15. The said Award has been challenged in the present First Appeal. By virtue of the said Award, it has been directed by the Tribunal that compensation of Rs. 2,04,500/- with interest at the rate of 12% from the date of application till the date of deposit should be given to the claimants.

4. Learned Advocate Ms. Megha Jani appearing for the Appellant - Insurance Company has submitted that the amount of compensation which has been awarded by the Tribunal is on the higher side. It has been submitted by her that though the deceased was only 10 years old, for the purpose of determining dependency amount, 1/3 of the notional income was deducted by the Tribunal. As a matter of fact, according to her, 2/3 of the amount should be deducted for the purpose of determining the amount of dependency. She has further submitted that after withdrawal of the amount which has been deposited by the appellant - Insurance Company, the claimants might withdraw the main petition, and in that event, it would be very difficult for the appellant Insurance Company to recover the amount, which might have been withdrawn by the claimants.

5. On the other hand, learned Advocate Shri Parekh appearing for respondents Nos. 1 and 2, who are the original claimants has submitted that the amount awarded by the Tribunal is quite reasonable. He has submitted

that the Tribunal has awarded the amount on the basis of Second Schedule of the Act and, therefore, it cannot be said that the amount is on the higher side. Moreover, he has submitted that the claimants do not have any intention to withdraw the Motor Accident Claim Petition No. 533 of 1999 and they would also not permit the said petition to be dismissed for default. Learned Advocate Shri Parekh has submitted that the claimants are ready and willing to file an undertaking to the above effect before the Tribunal.

6. We have heard the learned advocates and have perused the impugned award. Looking to facts of the case, in our opinion, this Appeal can be disposed of by giving a direction to the original claimants to file an undertaking before the Tribunal to the effect that the claimants would not withdraw the Motor Accident Claim Petition No. 533 of 1999 which is pending before the Tribunal; and the claimants would not permit the said petition to be dismissed for default.

7. So far as the amount of award is concerned, it has been submitted by the learned Advocates that a sum of Rs. 54,000/- along with proportionate interest and costs has been permitted to be withdrawn by the Tribunal and the amount has also been withdrawn by the claimants. Looking to the facts of the case, in our opinion, the rest of the amount, which has been deposited with the Tribunal, should be invested in a nationalised bank till the main petition is finally disposed of. Learned Advocate Shri Parekh has submitted that the amount as directed in the Award has already been deposited for a period ranging from 2 years to 5 years. Looking to the said fact, it is directed that as and when the period, for which the said amount has been invested expires, the amount shall be reinvested for a further period of three years and the interest which might accrue on the said amount shall be permitted to be withdrawn by the claimants.

8. In view of the above order, the First Appeal is allowed to the above extent and the impugned Award is modified accordingly with no order as to costs.

(A.R. Dave, J.)

(J.R. Vora, J.)

p.n.nair